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PROTECT THE ADIRONDACKS!
LEGACY • LEADERSHIP • VISION

Charles M. Clusen, Lorraine M. Duvall, Robert A. Harrison • Co-Chairs

January 4, 2012

BY E-FILING

Cynthia A. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JAN 04 2012

Part of
Public Record

Re: FD - 35559-0
Saratoga and North Creek Railway, LLC -
Notice of Operation Exemption - Tahawus Line
Motion for Leave to File Late Reply

Dear Ms. Brown:

On behalf of Protect the Adirondacks! Inc. ("Protect"), I hereby make a motion pursuant to 49 CFR § 1104.7, § 1011.2(a)(7), any other applicable rule, for leave to file a late Reply to the December 2, 2011 Appeal by Saratoga and North Creek Railway, LLC ("SNCR") in the above-captioned matter.

Good cause exists for the granting of this motion.¹

FACTUAL BACKGROUND

On November 23, 2011, based at least in part on objections raised by Protect, the STB rejected the Notice of Exemption filed by SNCR on October 25, 2011. On December 2, 2011, SNCR filed an Appeal of that ruling. A copy of that Appeal was duly served by SNCR on Protect.

Thereafter, on or about December 14, 2011, Charles Morrison, a Director of Protect and a member of its Conservation Advocacy Committee, contacted Gabriel S. Meyer of the STB staff's Office of Public Assistance, regarding the process for responding to the Appeal. On or about December 15, 2011, Mr. Meyer told Mr.

¹ If this motion is not timely, a similar request is made for leave to file it late, on the same grounds as the underlying motion for leave to file the Reply late.

Morrison that the deadline for filing a Reply to the Appeal was 20 days from its date of filing. Said date was December 22, 2011.

Accordingly, Mr. Morrison and I prepared a Reply to the Appeal, which was completed on December 21, 2011. I then caused said Reply to be duly served on December 21, 2011 by overnight express service, for delivery on December 22, 2011. In particular, said Reply was sent to the STB by "UPS Next Day Air". Pursuant to 49 CFR § 1104.6, the Reply is deemed to have been filed on December 22, 2011, regardless of when the STB staff actually received it.

Simultaneously with the sending of said Reply by UPS Next Day Air to the STB, I e-mailed a copy thereof to John Heffner, the attorney for SNCR. On December 21, 2011, Mr. Heffner filed by e-filing an objection to the Reply. The grounds for the objection was that the Reply was untimely, pursuant to 49 CFR § 1011.2(a)(7), which requires that a reply to an appeal be filed within ten days of the date that the appeal was due. As set forth in that objection, under 49 CFR § 1011.2(a)(7), the deadline for filing of the Reply was December 15, 2011.

ARGUMENT

It is true that, as alleged by Mr. Heffner, the Reply was not filed within the ten day period required by 49 CFR § 1011.2(a)(7). However, good cause exists for the failure to do so, and an extension of time to file the Reply should be granted, retroactively, to December 22, 2011, and/or the date of its actual receipt by the STB.

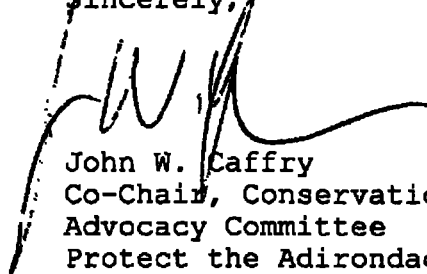
As set forth above, Protect contacted the STB Office of Public Assistance prior to the December 15, 2011 due date for the filing of a Reply. Protect then filed its Reply, effective on December 22, 2011, in reliance on the statement by Mr. Meyer, of the STB staff, that said Reply was due on that date.

If that date had in fact been the due date, the Reply would have been timely filed, pursuant to 49 CFR § 1011.2(a)(7) and § 1104.6. To its detriment, Protect relied upon the erroneous advice of the STB staff, resulting in its reply being filed late.

The foregoing facts constitute good cause under 49 CFR § 1104.7 for the late filing of Protect's Reply to SNCR's Appeal. It is also worth noting that the December 21, 2011 objection filed by Mr. Heffner did not allege that the late filing caused any prejudice to SNCR. Therefore, this motion should be granted.

January 4, 2012

Sincerely,



John W. Caffry
Co-Chair, Conservation
Advocacy Committee
Protect the Adirondacks! Inc.

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Cynthia A. Brown
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VERIFICATION

I, John W. Caffry, as Co-Chair of the Conservation Advocacy Committee of Protect the Adirondacks! Inc. declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this pleading.

January 4, 2012

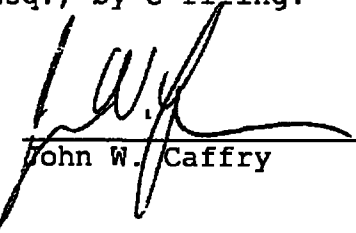


John W. Caffry

CERTIFICATION OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States Mail and that I have served John Heffner, Esq., by e-filing.

January 4, 2012



John W. Caffry